

**STATE OF CONNECTICUT  
DIVISION OF PUBLIC DEFENDER SERVICES**

**PERFORMANCE GUIDELINES FOR COUNSEL IN FAMILY MATTERS**

**PURPOSE:**

These guidelines are intended to encourage Public Defenders and Assigned Counsel contracted by the Division of Public Defender Services to perform to a high standard of representation and to promote professionalism in the representation of Division clients. As used in these Performance Guidelines, (1) Public Defenders shall mean all Public Defenders, Executive Assistant Public Defenders, Supervisory Assistant Public Defenders, Senior Assistant Public Defenders, Assistant Public Defenders, Deputy Assistant Public Defenders and (2) counsel shall mean all Public Defenders and Assigned Counsel and Guardians ad litem who contract with the Office of Chief Public Defender (OCPD).

These Guidelines are intended to be used as a guide for the representation of clients of the Division of Public Defender Services. The guardian ad litem in a family matter is bound by the State of Connecticut Judicial Branch Counsel for the Minor Child and Guardian ad Litem Code of Conduct.

These Guidelines should be used by counsel and guardians ad litem in evaluating and improving their own performance and by supervising attorneys in evaluating staff performance. However, these Guidelines are not intended to be used as criteria for the judicial evaluation of performance or alleged misconduct or effectiveness of counsel or guardians ad litem.

**SECTION 1: GENERAL PROVISIONS**

**GUIDELINE 1.1 ROLE OF COUNSEL**

- 1) Counsel should zealously represent and advocate for each client and render effective assistance of counsel.
- 2) To ensure the preservation, protection and promotion of the client's rights and interests, counsel has a continuing obligation to:
  - a) be proficient in the applicable substantive and procedural law;
  - b) acquire and maintain appropriate experience, skills and training;
  - c) devote adequate time and resources to the case;
  - d) engage in the preparation necessary for quality representation;

- e) endeavor to establish and maintain a relationship of trust and open communication with the client;
  - f) keep the client informed and seek the lawful objectives of the client;
  - g) promptly comply with reasonable requests for information including the attorney client file; and,
  - h) make accommodations and take reasonably necessary protective action where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.
- 3) Counsel should adhere to the Rules of Professional Conduct and other guidelines of professional conduct as stated in statutes, rules, court decisions, codes or canons and adhere to the Rules of the Superior Court.
  - 4) Counsel should act with reasonable diligence and promptness in representing clients.
  - 5) Counsel should abide by the policies adopted by the Connecticut Public Defender Services Commission and the Chief Public Defender in regard to the representation of a client.

## **GUIDELINE 1.2 CONFLICTS OF INTEREST**

- 1) Counsel should adhere to the Rules of Professional Conduct regarding conflicts of interest.
- 2) Counsel should be cognizant of the existence of any potential and actual conflicts of interest which would impair counsel's ability to represent a client, including if the representation of one client in the same or a substantially related matter in which that person's interests are materially adverse to those of a current or former client, and report any such conflict to his/her supervisor immediately upon learning of such.
- 3) Except at arraignment, counsel should not represent a client when a conflict of interest exists between co-defendants or multiple defendants such that the representation of one client will be directly adverse to the other client.
- 4) Counsel should not represent a client if the representation of that client involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - a) the representation of one client will be directly adverse to another client; or
  - b) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- 5) Counsel who has formerly represented a client should not thereafter use information relating to the former representation to the disadvantage of a former client except as the Connecticut Rules of Professional Conduct would permit or

require with respect to a client, or when the information has become generally known or reveal information except as the Rules permit.

- 6) Counsel should not withdraw solely on the basis of a personality conflict with the client or a difference of opinion as to how to proceed in the case, unless required by the Rules of Professional Conduct.
- 7) The filing or existence of a habeas corpus petition or grievance against counsel in regard to his/her quality of representation shall not create a conflict of interest per se. Withdrawal by counsel from the representation of a client under such circumstances should occur if ordered by the court upon motion by the client or if counsel is of the opinion that the filing or existence of the habeas corpus petition or grievance will interfere with counsel's ability to adequately represent the client.
- 8) Counsel should withdraw from representation: (1) upon the filing of a claim with the Connecticut Claims Commissioner or a civil lawsuit in state or federal court against counsel by a client alleging malpractice; (2) upon a finding of probable cause in connection with a grievance complaint; or, (3) if counsel has been scheduled to testify at a habeas corpus trial in which (a) counsel is the subject of the claim of ineffective assistance of counsel which has been raised in the petition and, (b) the pleadings have been closed.
- 9) Counsel shall not provide financial assistance to an indigent client in connection with a pending case except in accordance with the policies of the Public Defender Services Commission and the Rules of Professional Conduct.

### **GUIDELINE 1.3 LAWYER-CLIENT RELATIONSHIP**

- 1) Counsel should seek to establish a relationship of trust and confidence with the client.
- 2) As soon as practicable after being appointed, counsel should contact the client and conduct an initial client interview.
- 3) Counsel should schedule confidential legal visits with the incarcerated client when necessary to provide effective representation and maintain effective communication with the client by mail or telephone.
- 4) Counsel should preserve all client confidences and should not knowingly disclose privileged and confidential information obtained during the course of representation, unless authorized to do so by the client or the court or as otherwise permitted by law or the Connecticut Rules of Professional Conduct.
- 5) Counsel should ensure that barriers to communication with the clients, such as differences in language or literacy, are overcome. Counsel should make

accommodations and take reasonably necessary protective action where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.

#### **GUIDELINE 1.4 DUTY TO KEEP CLIENT INFORMED**

- 1) Counsel should promptly keep the client informed of any developments in the case and the progress of the preparation of the case, and promptly provide sufficient information to permit intelligent participation in decision making by the client.
- 2) Counsel should promptly comply with reasonable requests for information received from the client including requests for a copy of the attorney client file and promptly reply to client correspondence and telephone calls.
- 3) Counsel in a delinquency matter should inform and explain to the client that he/she has the constitutional right to (1) plead not guilty; (2) in an adult criminal matter to be tried by a judge or a jury; (3) to the assistance of counsel; (4) to confront and cross-examine witnesses against him/her; (5) to testify; and, (6) to not be compelled to incriminate him/herself.
- 4) Counsel for a parent in a child protection matter should inform and explain to the client that he/she has the right to admit or (1) deny the allegations against them; (2) to have the allegations tried before a judge; (3) to the assistance of counsel; (4) to confront and cross examine the witnesses against them; (5) to testify; (6) to maintain some decision making authority over their child while the allegations are pending; (7) to propose alternative placement options for their child; (8) to have the Department of Children and Families provide services and make reasonable efforts to reunite their families.
- 5) Counsel for a minor child or a guardian ad litem in a child protection or family matter shall keep the child informed of the progress of a case in a developmentally appropriate manner tailored to the needs of the client. Counsel should discuss the case with the child to determine the child's goals and desired outcomes.
- 6) Counsel should explain to the client the court procedures and provide sufficient information to the client so that he/she can participate intelligently in decisions relating to the objectives in the case.
- 7) Counsel should explain the attorney-client privilege to the client and explain to the client that he/she is not required to speak to anyone regarding the case without counsel present.

#### **GUIDELINE 1.5 PROTECTING CONFIDENTIALITY**

Counsel should ensure that confidential communications between counsel and the client are conducted in privacy, including making reasonable efforts to compel court and other officials to make necessary accommodations for confidential and privileged discussions between counsel and clients in places where clients must confer with counsel. Counsel in juvenile matters must be aware that the attorney client privilege runs to the client but not to the parent or guardian. The client must be advised of this. Care must be taken to keep protected communication confidential.

## **GUIDELINE 1.6 REPRESENTATION AFTER DISPOSITION IN JUVENILE MATTERS**

Counsel's responsibility to the client is governed by Section 3-9 of the Connecticut Practice Book. Counsel is expected to maintain representation of the client through the end of all court orders in delinquency and child welfare cases. Counsel in delinquency cases are expected to maintain active representation until the child's probation or commitment period ends unless proper referral is made to the OCPD Post Conviction Unit. Counsel in Child Welfare Matters are expected to maintain active representation through the conclusion of the client's involvement with DCF.

## **GUIDELINE 1.7 THE IMPAIRED CHILD CLIENT**

- 1) Counsel for the minor child shall determine whether the child client's ability to make decisions or to communicate in connection with the case is impaired due to age, mental impairment or other reason. In making the determination, the lawyer should consult the child and may consult other individuals or entities that can provide the child's lawyer with the information and assistance necessary to determine the child's ability to direct the representation.
- 2) If the child client is impaired and unable to communicate or direct the representation, counsel for the minor child shall take protective action as contemplated by Section 1.14 of the Connecticut Rules of Professional Conduct.
- 3) When a child client is impaired the counsel for the minor child shall make a good faith effort to determine the child's needs and wishes. The child's lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the child client.
- 4) Where a normal client-lawyer relationship is not reasonably possible to maintain, counsel for the minor child in a child welfare matter shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination. Counsel for the minor child should take direction from the child as the child develops the capacity to direct the lawyer. Counsel for the minor child shall advise the court of the determination of capacity and any subsequent change in that determination.

- 5) Where counsel for the minor child in a juvenile delinquency case believes that the child is impaired and is unable to participate in his or her own defense or comprehend the proceedings, counsel should have the child evaluated to determine competency to stand trial.
- 6) In cases where the child client is impaired, counsel for the minor child may consult with the guardian ad litem. The attorney for the child must take care not to substitute the role of best interest advocate but to continue to advocate on behalf of the child's wishes to the best of their ability.

## **SECTION II TRAINING AND EXPERIENCE**

### **GUIDELINE 2.1 GENERAL QUALIFICATIONS**

- 1) Counsel should be familiar with substantive criminal or civil law, criminal or civil procedural law, the Connecticut Rules of Practice and the prevailing customs or practices of the court in which he/she practices.
- 2) Counsel for the minor child and Guardians ad litem in Family Matters must complete the training program required by Section 25-62 and 25-62A of the Connecticut Practice Book.
- 3) Counsel for in Child Welfare matters are required to complete pre service training of up to three days prior to being eligible to represent child or parent clients.
- 4) Counsel in juvenile delinquency, child welfare and family matters should have training in the following areas:
  - a. adolescent and child development;
  - b. adolescent brain development as it relates to decision making;
  - c. special issues relating to child's statements;
  - d. educational Issues and Special education;
  - e. domestic violence and its effect on children;
  - f. impact of incarceration on families; and,
  - g. adolescent and adult substance abuse.

### **GUIDELINE 2.2 CONTINUING OBLIGATION**

- 1) Counsel has a continuing obligation to stay abreast of changes and developments in criminal and civil law and criminal and civil procedure as it applies to his/her legal practice.
- 2) Counsel has an obligation to continue his/her legal training, professional development and education through the weekly review of the Connecticut Law Journal and other legal periodicals. Counsel should participate in person or via

taped or multimedia programs, in Public Defender, bar and professional legal association, regional, or national legal training events, legal seminars and training. Public Defenders employed by the Commission should complete a minimum of twelve hours of such training annually. Assigned Counsel must complete a minimum of six hours of such training annually and certify such completion to the Office of Chief Public Defender annually.

- 3) Supervisory attorneys as office heads shall be provided with management training on a regular periodic basis.

## **GUIDELINE 2.3 PUBLIC DEFENDER STAFF ATTORNEYS**

- 1) Newly hired Public Defenders shall be required to participate in the following training activities during their first year as employees of the Division of Public Defender Services:
  - a) A New Attorney Training Program conducted by the OCPD Training Department covering the duties and responsibilities of a Public Defender, ethics of defense practice, basic criminal practice and procedure, and a review of the Connecticut Public Defender Services Commission Guidelines on Indigent Defense. Said Training Program shall be conducted over a twelve-month period in accordance with a curriculum developed by the OCPD Training Department. An appropriate training in juvenile matters may be substituted for any part of the program at the discretion of the Director of Delinquency Defense and Child Protections and the Director of Training
  - b) A Trial Advocacy Program conducted by the OCPD Training Department covering the development of basic trial skills for criminal defense. When available, a newly hired attorney in juvenile matters may participate in an approved trial advocacy program focused on juvenile delinquency matters at the discretion of the Director of Delinquency Defense and Child Protections and the Director of Training.
  - c) A Mentor Program through which newly hired Public Defenders will be paired with an experienced Public Defender for the first six months of employment. The mentor will be available to meet periodically with the new Public Defender and to provide advice and assistance as necessary to support the new Public Defender during this transition period.
  - d) The Chief Public Defender may vary any of the requirements of this section based on the prior experience of the newly hired Public Defender.

## **GUIDELINE 2.4 ASSIGNED COUNSEL IN JUVENILE AND FAMILY MATTER**

- 1) New Assigned Counsel for Juvenile Matters-Child Protection must complete a three day pre service training on child protection practice and procedure before being assigned cases under the contract. The new Assigned Counsel must also attend a fourth day of follow up training and work with a mentor for the first year of the contract or as deemed necessary by the Office of Chief Public Defender.

- 2) Assigned Counsel for Family Matters-AMC/GAL must complete the 6 day training program required by Connecticut Practice Book Section 25a-62 before being eligible to take cases.
- 3) New Assigned Counsel for Juvenile Matters-Delinquency must participate in Basic Training for Assigned Counsel.
- 4) All Assigned Counsel for Juvenile and Family Matters must certify that they have completed 6 hours of training annually at the time of renewal of the contract.

## **SECTION III: FAMILY MATTERS**

### **GUARDIAN AD LITEM IN CUSTODY CASES**

#### **GUIDELINE 3.1 THE ROLE OF THE GUARDIAN AD LITEM (GAL) FOR MINOR CHILDREN IN FAMILY MATTERS**

- 1) The role of the GAL is to determine and speak on behalf of the best interest of the child in the proceedings that are the subject of the GAL appointment, without being bound by the child's preferences.
- 2) If the child also has an attorney, the guardian ad litem shall ensure that the child is aware that he or she has an attorney and shall explain the difference in the role of the attorney and the guardian ad litem in an age and developmentally appropriate manner.
- 3) A GAL shall identify himself or herself as a GAL when contacting individuals in the course of a particular case and inform those individuals about the role of a GAL in the case at the earliest practicable time. A GAL shall advise such individuals that the documents and information obtained may become part of court proceedings.
- 4) A GAL should communicate recommendations to counsel when a party is represented and directly to the litigant when self-represented.

#### **GUIDELINE 3.2 BASIC OBLIGATIONS OF THE GUARDIAN AD LITEM (GAL) IN FAMILY MATTERS**

- 1) The guardian ad litem should comply with the court's instructions as set out in the order appointing counsel or a GAL, and shall not provide or require services beyond the scope of the court's order of appointment unless he or she obtains additional instruction, clarification or expansion of the scope of such appointment from the court.



- 2) The guardian ad litem should be aware of other pending legal actions involving the subject child, including but not limited to pending delinquency charges, child welfare matters, probate matters or criminal cases where the child is a victim.
- 3) The guardian ad litem should meet with the child as soon as possible after being given the list of duties from the court.
- 4) The GAL should gather and review all relevant records consistent with the court's order and should not rely solely on the representations of any party or counsel.
- 5) The guardian ad litem shall advise all persons contacted, including the child and the parents, of the non confidential nature of the conversation or interview
- 6) The GAL should maintain complete and written records of all interviews and investigations.
- 7) The GAL shall participate in the proceedings as directed by the court. Any written reports filed with the court should be provided to all counsel of record and self represented parties.
- 8) If a Guardian ad litem determines that there is a conflict of interest requiring withdrawal, the Guardian should continue to perform as the Guardian ad litem and seek permission from the court to withdraw. The Guardian should request appointment of a successor.

### **GUIDELINE 3.3 CONFIDENTIALITY RELATING TO GUARDIANS AD LITEM IN FAMILY**

- 1) A guardian ad litem shall observe all statutes, rules and regulations concerning confidentiality.
- 2) A guardian ad litem shall not disclose information or participate in the disclosure of information relating to an appointed case to any person who is not a party to the case, except as may be specifically provided by law or ordered by the court.
- 3) Communications made to a guardian, including those made to a guardian by a child, are not privileged and may or may not be disclosed to the parties, the Court or to professionals providing services to the child or the family based on the guardian's evaluation of the best interests of the child. If the guardian is an attorney, she or he acts in the capacity of a guardian, rather than as an attorney, and information he or she receives is not subject to the client confidentiality.

### **GUIDELINE 3.4 DUTY TO CHILD/WARD**

If the guardian ad litem has a concern about the safety of a child or children, the GAL should immediately file a Request for a Status Conference (JD-FM-219). The guardian ad litem should make an immediate report to all proper authorities if he or she believes that the child is in imminent danger of serious physical harm.